

ELECTION

Applicant elects, with traverse, what the Examiner has characterized as “Invention I”, deemed drawn to a current sensing system, and corresponding to claims 1-30. Applicant further elects the species of Fig. 6.

REMARKS

The Examiner has identified two inventions in the pending claims. The Examiner’s classification of the inventions include group I consisting of claims 1-30 drawn to a current sensing system and classified by the Examiner in class 324, subclass 117H, and group II consisting of claim 31 drawn to a method of making a flux concentrating current sensor and classified by the Examiner in class 324, subclass 117R.

The Examiner related groups I and II “as product and process of use” under MPEP section 806.05(h). *Office Action, Jan. 10, 2006, p. 2*. Applicant respectfully disagrees. Group II is not a process of using the product of group I. In fact, as stated above, the Examiner deemed that group II is drawn to “a method of making a flux concentrating current sensor.” The Examiner’s own language indicates that groups I and II are not related as a product and a process of using the product. Instead, groups I and II are related as a process of making and a product made under MPEP §806.05(f), which states that groups I and II “can be shown to be distinct inventions if either or both of the following can be shown: (A) that the process as claimed is not an obvious process of making the product and the process as claimed can be used to make ***>another materially different product<;* or (B) that the product as claimed can be made by another ** materially different process.*” However, in this case, groups I and II are not distinct inventions under MPEP §806.05(f). That is, the process as claimed is an obvious process of making the product and the product as claimed cannot be made by a materially different process. Since groups I and II are not related as product and process of use and since groups I and II are not distinct inventions under MPEP §806.05(f), the Examiner’s restriction requirement must be withdrawn.

Further, even if groups I and II were related as product and process of use as the Examiner concluded, MPEP section 806.05(h) states that “[t]he burden is on the examiner to provide an example.” The Examiner has not met this burden because no example of the process being practiced with another materially different product has been given. Instead, the Examiner merely stated that “[i]n the instant case, the method of group II can be used with other apparatus

other than the apparatus of group I.” *Office Action, supra at 2.* Using the method of group II with “other apparatus other than the apparatus of group I” does not satisfy the Examiner’s burden to provide an example. MPEP section 806.05(h) states that the product and process of using the product may be shown to be distinct if “the process of using as claimed can be practiced with another materially different product.” The Examiner’s statement that the process can be used with other apparatus other than that of group I does not show that the process can be practiced with another materially different product or which other materially different product. In fact, no “materially different product” has been identified by the Examiner. Applicant cannot provide an argument that the use suggested by the examiner cannot be accomplished when no specific product example has been suggested.

As such, the Examiner has failed to meet the burden as set forth in the MPEP to properly classify the identified groups or to properly satisfy the Examiner’s burden of the identified classification. As such, the restriction requirement must be withdrawn and groups I and II must be rejoined.

Applicant has further elected the species identified by the Examiner as the species of Fig. 6. Of the elected group, the following claims are readable thereon: 1-9, 14-25, and 29-30. Furthermore, upon rejoinder of groups I and II as described above, claim 31 is additionally readable on the species of Fig. 6.

For all these reasons, Applicant respectfully requests rejoinder of all claims, of each group. The Examiner is invited to call the undersigned to discuss this Election or any other matters regarding this application to further prosecution.

Respectfully submitted,

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